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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 MONLETO HOLLY,

20 Defendant(s).

21 Case Nos.: 23-cr-0145-RS; 14-cr-0238-RS

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**STIPULATION AND ORDER
CONTINUING SENTENCING HEARING**

29 The above-captioned matter is set on August 6, 2024, before this Honorable Court, for a
30 sentencing hearing. For the reason set forth below, defense counsel requests that the Court reset this
31 matter to January 7, 2025, at 9:30 a.m., to give defense counsel additional time to assess a legal issue
32 related to Mr. Holly's guilty plea to 18 U.S.C. § 922(g), felon in possession of a firearm. While the
33 government disagrees with the defendant's analysis below, the government does not object to a
34 continuance.

35 A three judge panel of the Ninth Circuit held in *United States v. Duarte*, 101 F.4th 657 (9th
36 Cir. May 9, 2024), that a person previously convicted of five felonies that it deemed "non-violent"
37 could not constitutionally be convicted of violating § 922(g)(1) for possessing a handgun given the
38 Supreme Court's interpretation and analysis of the Second Amendment in *New York State Rifle &*
39 *Pistol Ass'n v. Bruen*, 592 U.S. 1 (2022). *Duarte*, 101 F. 4th 657, 661. Before *Bruen*, the Ninth
40 Circuit had upheld the constitutionality of § 922(g)(1). *United States v. Vongxay*, 594 F.3d 1111 (9th
41 Cir. 2010).

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1 Cir. 2010). *Duarte*, however, held that the reasoning of *Vongxay* is “clearly irreconcilable” with
 2 *Bruen*, “and its holding therefore no longer controls.” *Id.* at 665. (internal quotation marks omitted).
 3 Because the Ninth Circuit’s prior precedent in *Vongxay* had “foreclosed the argument Duarte now
 4 makes,” Duarte had good cause not to raise it before his trial. *Id.* at 663.

5 Even for prior convictions that may not appear to be “non-violent” in the colloquial sense, the
 6 analysis the Supreme Court in *Bruen* and the Ninth Circuit in *Duarte* court used to determine whether
 7 a prior conviction disqualifies a person from the Second Amendment’s protections is historical and
 8 complicated. *See Duarte, supra*, at 690. (“A more faithful application of *Bruen* requires the
 9 Government to proffer Founding-era felony analogues that are ‘distinctly similar’ to Duarte’s
 10 underlying offenses and would have been punishable either with execution, with life in prison, or
 11 permanent forfeiture of the offender’s estate.”).

12 On July 17, 2024, the Ninth Circuit ordered an *en banc* rehearing of *Duarte* pursuant to
 13 Federal Rule of Appellate Procedure (35)(a) and Circuit Court Rule 35-3 and vacated the three-judge
 14 panel decision. See *United States v. Duarte* 108 F.4th 786 (July 17, 2024). Just before that grant, the
 15 United States Supreme Court decided *United States v. Rahimi*, 144.S.Ct. 1889 (June 21, 2024) which
 16 allowed for the prohibition of firearms by people subject to domestic violence restraining orders.
 17 However, as laid out in the dissent to the grant of the *en banc* hearing, the decision in *Rahimi* is a
 18 narrow one and does not provide clarity in the § 922(g) offense context. The *en banc* hearing is now
 19 set for argument the week of December 9, 2024. (See Court of Appeals Docket 22-50048, Dkt. 89.)

20 Allowing Mr. Holly’s case to proceed to sentencing in light of the uncertainty surrounding the
 21 constitutionality of § 922(g)(1) as applied to him could lead this Court to “wast[e] judicial resources.”
 22 *United States v. Hickey*, 580 F.3d 922, 927 (9th Cir. 2009). Because of the continued uncertain state
 23 of the law, the defense asked the government for additional time to follow the *en banc* review in
 24 *Duarte*. The government does not oppose this request for a continuance. Additionally, the parties
 25 conferred with the supervisor of the probation officer assigned to this case, who confirmed that
 26 probation is available on the requested date.

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1 For these reasons, defense counsel requests, and the government does not object to a request
2 that the Court continue the November 12, 2024 sentencing date and reset this matter to January 7,
3 2025 at 9:30 a.m. for sentencing.

4 IT IS SO STIPULATED.

5 DATED: October 28, 2024

ISMAIL RAMSEY

6 United States Attorney

7 /s/
8 KELSEY DAVIDSON
9 Assistant United States Attorney

10 /s/
11 KATHRYN ROSS
12 Attorney for Mr. Holly

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15 **ORDER**

16 Based on the reasons provided in the stipulation of the parties above, and for good cause
17 shown, the sentencing hearing in the above-captioned matter is continued from November 12, 2024
18 to January 7, 2025 at 9:30 a.m.

19 IT IS SO ORDERED.

20 Dated: 10/28/2024

21 
22 HON. RICHARD SEEBORG
23 United States District Judge